Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1979

NO. 79-1607

CALVIN T. SHERARD,
Petitioner,

V

R. B. SHELTON, DIRECTOR
WAYNE COUNTY DEPARTMENT OF SOCIAL SERVICES
on behalf of: BETTYE J. SHERARD,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

TO THE MICHIGAN SUPREME COURT

CALVIN T. SHERARD
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IN THE
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v.

R. B. SHELTON, DIRECTOR,
WAYNE COUNTY DEPARTMENT OF SOCIAL SERVICES,
ON BEHALF OF: BETTYE J. SHERARD,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE MICHIGAN SUPREME COURT

To the Honorable Chief Justice, and Associate Justices of the Supreme Court of the United States:

CALVIN T. SHERARD, the Petitioner, in Pro Per herein prays that a Writ of Certiorari issue to review the judgment of the Michigan Supreme Court entered in the above entitled case on January 22, 1980.

OPINION BELOW

The January 22, 1980 opinion of the Michigan Supreme Court Denying Reconsideration is reprinted in Appendix A hereto, infra, page 7 . The judgment of Michigan Supreme Court Denying Application For Leave is reprinted in Appendix A hereto, infra, page 8. The Michigan Appeals Court judgment Denying Rehearing, and order Dismissing Application For Leave are reprinted in Appendix A hereto, infra, pages 9 &10respectively. The judgment of Wayne County

Circuit Court is reprinted in Appendix A hereto, infra, page 11.

JURISDICTION

The judgment of Michigan Supreme Court (Appendix A, infra, page 8) was entered October 15, 1979. A timely petition for reconsideration was denied on January 22, 1980 (Appendix A, infra, page7). The jurisdiction of the Supreme Court is invoked under 28 USCS § 1257 (3).

QUESTIONS PRESENTED

I

Is a Court Order valid in the State of Michigan that violates AMEND. 14, U.S. CONST. due process clause ?

II

Is AMEND. 14, U.S. CONST. protected from impairment by the states ?

III

Is a Court Order without a hearing enforceable on petitioner ?

CONSTITUTIONAL PROVISION INVOLVED

This case involves the due process clause of the Fourteenth Amendment to the Constitution of the United States, which provides as follows:

> No State shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This action was brought by petitioner herein acting in Pro Per on October 3, 1978 pursuant to AMEND. 14, U.S. CONST. due process clause.

On October 3, 1978,Petitioner filed a Motion, Affidavit and Brief in support thereof in Wayne County Circuit Court, to have a Family Support Order, that was entered September 14, 1974 invalidated (Appendix A, infra, page12), because Petitioner did not have the right to be heard.

With no opposition from the other side (prima facie case)the Court DENIED Petitioner's Motion To Invalidate (Appendix A, infra, page11).

A timely Application For Leave was filed in Michigan Appeals Court. The Court of Appeals DISMISSED Petitioner's application stating "it was filed 18 months after entry of the 1974 Court Order (Appendix A, infra, page10). There was no opposition from the other side.

An Order issued in violation of a constitutional guaranteed right is subject to attack at any time,with subsequent filing being timely. The right to due process of the law is basic to the concept of ordered liberty and justice.

A timely Application For Rehearing was DENIED (Appendix A, infra,page 9).

A timely Application For Leave was filed in Michigan Supreme Court, and was DENIED (Appendix A, infra, page 8).

A timely Application For Rehearing was filed, and DENIED (Appendix A, infra, page 7).

The validity of a Court Order without a hearing; Whether the 14th Amendment to the U.S. Constitution forbids the states from depriving U.S. citizens of constitutional guaranteed rights; were asked at all levels of the State Courts. The federal questions

were totally ignored by Michigan Courts, which dealt only with a technicality on statute of limitation, that dose not exist in pursuit of constitutional guaranteed rights.

* The only Court Order reviewable in the appeal of a Family Support Order (interlocutory) is the Order appealed from:

George v Rollins, 176 Michigan 144, 142 NW 337:

> "An appeal from an interlocutory order bring up for review only the order or judgement appealed from"

Since there is no statute of limitation in the pursuit of constitutional guaranteed rights the Michigan Supreme Court was in error in not dealing with this issue and correcting it, and by NOT citing Petitioner's application as being timely to deal with the constitutional question, that was over looked by Michigan Appeals Court.

If there is a 18 months statute of limitait would not apply in this cause, because this has been an onging matter since the entry of the initial Court Order September 14, 1974, in Wayne County Circuit Court.

Ammlung v Chester, 355 F Supp 1300 (1973, DC PA), affirmed 494 F2d 811, (CA 3 PA):

> "statute of limitation is not tolled by plaintiff's prior state action"

In first appeal petitioner did not go back to trial court before appealing. U.S. Supreme Court denied certiorari October 11, 1976, # 76-236.

REASON FOR GRANTING WRIT

1. Michigan Courts acted contrary to U.S. Supreme Court's interpretation of due process.

Due process requires that proceedings in a state court conform to fundamental conceptions

of justice.

2. To proform the Federal Courts duty.

"The federal courts will intervene to protect the life or liberty of one from a judgment if a proceeding is not conducted according to such standards and the state supplies no corrective process".... U.S.--Mooney v Holohan, 55 S.Ct. 340, 294 U.S. 103, 79 L.Ed.701, 98 A.L.R. 406, rehearing denied Ex parte Mooney, 55 S.Ct. 511, 294 U.S. 732, 79 L.Ed. 1261.

3. A Court Order without notice and opportunity to be heard is invalid.

"It never has been doubted by this Court or any other, so far as we know, that notice and hearing are preliminary steps essential to the passing of any enforceable judgment" Powell v Alabama, 287 US. 45 (1932).

A decision of a state court involving a claim that petitioner has been denied the equal protection of the laws guaranteed him by the Federal Constitution is subject to review by the United States Supreme Court....

U.S.-Shelley v Kraemer, Mich. & Mo., 68 S.Ct. 836, 334 U.S. 1, 92 L.Ed. 1161, 3 A.L.R.2d 441:

> "A claim that a state has, in violation of the Federal Constitution, denied to petitioner the equal protection of the laws guaranteed him by the Federal Constitution is sufficient to support review by the United States Supreme Court of a decision of a state court"

...when it is contrary to the law as established by the prior decisions of the Supreme Court.

CONCLUSION

The State Courts of Michigan has left standing a Court Order, that denied petitioner due process, which is a guaranteed right under the Fourteenth Amendment to the United States Constitution.

Wherefore, Petitioner respectfully prays that a Writ of Certiorari be granted.

CALVIN T. SHERARD, IN PRO PER
4095 Webb, #105
Detroit, Michigan 48204
(313) 935-0157

Date 3/27/80

ORDER DENYING RECONSIDERATION

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room, in the City of Lansing, on the 22nd day of January in the year of our Lord one thousand nine hundred and eighty.

Present the Honorable

MARY S. COLEMAN,
Chief Justice,

THOMAS GILES KAVANAGH,
G. MENNEN WILLIAMS,
CHARLES L. LEVIN,
JOHN W. FITZGERALD,
JAMES L. RYAN,
BLAIR MOODY, JR.,
Associate Justices.

CR 27-18a

WAYNE COUNTY SOCIAL SERVICES, on behalf of:

No. 63449

COA: 43311

BETTYE JOYCE SHERARD,
Plaintiff-Appellee LC: 74-011-235 DS

v

CALVIN THOMAS SHERARD,
Defendant-Appellant./

On order of the Court, defendant-appellant's application in propria persona for rehearing is DENIED because GCR 1963, 864.4, provides for the filing of such applications only in opinion cases. Defendant-appellant's application is treated as a motion for reconsideration of this Court's order of October 15, 1979, and the motion is DENIED, because it dose not appear to the Court that said order was entered erroneously.

22nd day of January, 1980.

Corbin R. Davis
Deputy Clerk.

ORDER DENYING LEAVE TO APPEAL

Michigan Supreme Court

Present the Honorable
MARY S. COLEMAN,
Chief Justice,

THOMAS GILES KAVANAGH,
G. MENNEN WILLIAMS
CHARLES L. LEVIN
JOHN W. FITZGERALD
JAMES L. RYAN
BLAIR MOODY, JR.,
Associate Justices

On order of the Court, the delayed application in propria persona for leave to appeal is considered, and it is DENIED, because the Court is not persuaded that the questions presented should be reviewed by this Court.

Lansing, Michigan, October 15, 1979.

Signed: Corbin R. Davis
Deputy Clerk.

ORDER DENYING REHEARING

Michigan Appeals Court

Present the Honorable

MICHAEL F. CAVANAGH
Presiding Judge

MICHAEL J. KELLY

WILLIAM R. BEASLEY
Judges

In this cause an application for rehearing is filed by defendant-appellant, and no answer in opposition thereto having been filed, and due consideration thereof having been had by the Court,

IT IS ORDERED that the application for rehearing be, and the same is hereby DENIED.

Court of Appeals at Lansing, Mich.
this 22nd day of June, 1979

/s/ RONALD L. DZIERBICKI
Clerk

ORDER DISMISSING LEAVE TO APPEAL

Michigan Appeals Court

Present the Honorable
MICHAEL F. CAVANAGH

Presiding Judge

MICHAEL J. KELLY
WILLIAM R. BEASLEY
Judges

No. 43311
L.C. #
74-011-235 DS

In this cause a delayed application for leave to appeal is filed by defendant-appellant, and no answer in opposition thereto having been filed by plaintiff-appellee, and **due consideration thereof having been had by** the Court,

IT IS ORDERED that the delayed application be, and the same is hereby DISMISSED for the reason that it was filed more than 18 months after the entry of the 1974 order appealed from in this civil matter. See GCR 1963, 806.2 and Treece v The Greyhound Bus Co. 63 Mich App 63 (1975).

Court of Appeals, Lansing,
Mich. this 16th day of May,
1979.

/s/RONALD L. DZIERBICKI
Clerk

ORDER DENYING MOTION TO INVALIDATE

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

R. B. SHELTON, WAYNE COUNTY DIRECTOR
of SOCIAL SERVICES on behalf of:

BETTYE JOYCE SHERARD,
Plaintiff,

-vs-

C.A. No.
74-011-235 DS

CALVIN THOMAS SHERARD,
Defendant./

ORDER DENYING MOTION TO INVALIDATE FAMILY SUPPORT ORDER

At a session of said Court held in the City-County Building, in the City of Detroit, County of Wayne and State of Michigan, on Nov 29 1978

PRESENT: HONORABLE MYRON H. WAHLS

This action having been brought on to be heard on November 17, 1978 upon the defendant's motion, and all parties **having been present,**

It is hereby ordered that the defendant's Motion to Invalidate Family Support Order be denied.

MYRON H. WAHLS
CIRCUIT JUDGE

CALVIN T. SHERARD
In Pro PER

WAYNE COUNTY CIRCUIT COURT

ORDER FOR FAMILY SUPPORT

No. 74-011-235 DS

IT IS ORDERED that defendant pay to the office of the Friend of the Court, 600 Randolph Street, Detroit, Michigan 48226, commencing 09/13/74, the sum of $22.50 per week as support for each of the two minor children, KAREN SHERARD born 09/11/61, STEPHANIE SHERARD born 07/28/68, and continuing until each child attains the age of eighteen (18) years or until further order of the Court;

IT IS FURTHER ORDERED that defendant husband shall provide the necessary medical, dental and hospital expenses and maintain hospitalization insurance for the plaintiff until further order of the Court and for each child until each child attains the age of eighteen (18) years or until further order of the Court;

IT IS FURTHER ORDERED that defendant husband shall pay to the Friend of the Court, the sum of $1.50 per month, payable semi-annually in advance on January 2nd and July 2nd hereafter while the order for support is operative. Initial payment for months preceding next regular due date shall be made forthwith.

September 13, 1974

/s/ NATHEN KAUFMAN
Circuit Judge

Supreme Court, U.S.
FILED
MAY 7 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1607

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Petitioner,
v.
R. B. SHELTON, Director,
WAYNE COUNTY DEPARTMENT OF SOCIAL SERVICES
ON BEHALF OF: BETTYE J. SHERARD,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE MICHIGAN SUPREME COURT

BRIEF FOR RESPONDENT IN OPPOSITION

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ON BEHALF OF: BETTYE J. SHERARD,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN SUPREME COURT

BRIEF FOR RESPONDENT IN OPPOSITION

OPINION BELOW

Respondent does not question petitioner's statement of the opinion of the court below.

JURISDICTION

From the hereinafter contained "Statement of Facts" respondent asserts that no federal issue is herein involved. The determinations of the state appellate courts were based solely on state appellate procedure. Basis for jurisdiction stated in the petition under 28 USC § 1257(3) does not lie, there being no federal question involved.

QUESTION PRESENTED

Petitioner misstates the nature of the legal issue sought to be reviewed. The sole legal inquiry at bar is whether petitioner may relitigate the identical question previously adjudicated by the Courts of the State of Michigan and this Court?

CONSTITUTIONAL ISSUE INVOLVED

Respondent asserts that no constitutional issue is involved.

STATEMENT OF FACTS

In the Wayne Circuit Court on September 13, 1974, an order was entered requiring the petitioner to pay $22.50 per week for the support of each of two minor children (petitioner's Appendix 12). On January 3, 1975 and again on March 14, 1975, petitioner was brought into Court and found guilty of violating the support order of September 13, 1974 and placed on probation. On April 10, 1975, petitioner filed a motion to modify the support

order of September 13, 1974. After hearing on petitioner's motion to modify, on July 18, 1975, petitioner's motion was denied and an order was entered affirming the provisions of the support order of September 13, 1974.

On or about August 1, 1975, petitioner attempted an appeal, to the Court of Appeals, AS OF RIGHT from the order of July 18, 1975 as well as from the order of September 13, 1974. On respondent's motion, the Court of Appeals dismissed petitioner's appeal; order dated December 1, 1975. Subsequent thereto the Michigan Supreme Court did by Order of June 4, 1976 deny petitioner's Application for Leave to Appeal, Michigan Supreme Court No. 57629. On October 11, 1976, this Court denied petitioner's Petition for a Writ of Certiorari (No. 76-236, the foregoing documents in the record therein contained).

On October 3, 1978, petitioner again endeavored to assail the validity of the aforesaid support orders by way of motion to invalidate same. On November 29, 1978, the Honorable Myron H. Wahls, Circuit Judge of the Third Judicial Circuit of Michigan, denied petitioner's Motion to Invalidate Family Support Order (petitioner's Appendix 11). On May 16, 1979, the Court of Appeals denied his Delayed Application for Leave to Appeal (petitioner's Appendix 10), and on June 22, 1979 that tribunal denied an Application for Rehearing (petitioner's Appendix 9). Subsequent thereto on October 15, 1979 the Michigan Supreme Court denied petitioner's Delayed Application for Leave to Appeal (petitioner's Appendix 8), and similarly denied Application for Rehearing on January 22, 1980 (petitioner's Appendix 7). In the light of the foregoing the instant Petition for a Writ of Certiorari ensues.

ARGUMENT OF LAW

Respondent asserts that no federal question is presented to this Court, therefore the Petition for Writ of Certiorari ought be denied.

Although petitioner avers that he is currently appealing from the January 22, 1980 opinion of the Michigan Supreme Court denying reconsideration of an Application for Leave to Appeal (from an Order originally issued by Circuit Judge Wahls denying a motion to invalidate a Circuit Court Order of September 13, 1974), the argumentation is but subterfuge designed to circumvent the rules of appellate procedure extant in Michigan jurisprudence and this Court as well.

The record in the case at bar (as evinced from the attachments appended to petitioner's Petition for a Writ of Certiorari, No. 76-236 and the records of this Court) establish beyond peradventure that appellant now endeavors to relitigate the validity of the Wayne County Circuit Court Support Order of September 13, 1974. Said order was previously challenged in the Michigan Court of Appeals, the Michigan Supreme Court and thereafter this Court as well. In this light the Court of Appeals' Order of May 16, 1979 (petitioner's Appendix 10) quite properly found that appellant's attempt to attack the September 13, 1974 Order by Motion to Invalidate (as denied November 29, 1978) was interdicted by GCR 1963, 806.2 and *Treece* v *The Greyhound Bus Co*, 63 Mich App 63 (1975). Subsequent thereto the Michigan Supreme Court denied Application for Leave to Appeal and Reconsideration as well.

Were appellant's assertion as to the posture of the law correct, any litigant could avail himself or herself of a

limitless number of appeals by utilizing the ruse of filing motions to invalidate subsequent to final appellate disposition. The law should not condone such an abuse of appellate procedcure.

In addition to the fact that petitioner has already once prosecuted an appeal to conclusion it is clear from the records of the Michigan Supreme Court that he is now attempting to re-prosecute said appeal. Appellant is bound under state law by the former adjudicaton of the Michigan Courts, *Clements* v *Constantine*, 344 Mich 446 (1955), and same would obtain even if appellant's rationale was at this juncture different, *Monger* v *New Era Assn*, 171 Mich 614 (1912); *Ruttle* v *What Cheer Coal Min Co*, 161 Mich 150 (1910); *Allen* v *Michigan Bell Telephone Co*, 61 Mich App 62 (1975) (*lv den*).

Equally well settled is the law addressing review to the United States Supreme Court. The succeeding is illustrative:

> ". . . plaintiff argues that the denial of certiorari does not make the lower court's decision the law of the Supreme Court. While this is of course true with respect to the value of a case as precedent, the relevant fact here is that the parties have had their day in court and the denial of certiorari merely signifies that appellate review has been exhausted." *Dean Hill Country Club Inc* v *City of Knoxville*, 379 F2d 321 (CA 6, 1967) *cert den* 389 US 975, 88 S Ct 476, 19 L Ed 2d 467 (1967).

Similarly (albeit in the dominion of the criminal law) . . .

> "But denial of certiorari marks final action on state criminal proceedings. In fields other than

> habeas corpus with its unique opportunity for repetitious litigation, as demonstrated in *Dorsey* v *Gill*, 80 App DC 9, 148 F2d 857, see 7 FRD 313, the denial would make the issues res judicata." *Brown* v *Allen*, 344 US 443, 456, 73 S Ct 397, 97 L Ed 469 (1952).

Petitioner having had his days in courts ought not be permitted to further abuse the appellate process.

CONCLUSION

The decisions of the Michigan appellate courts involved no federal questions. Jurisdiction for review by the United States Supreme Court under 28 USC § 1257(3) is not present. The Petition for Writ of Certiorari should therefore be denied.

Respectfully submitted,

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Dated: May 2, 1980